

DEPARTMENT OF EDUCATION**34 CFR Part 685****RIN 1840-AC19****William D. Ford Federal Direct Loan Program****AGENCY:** Department of Education.**ACTION:** Final regulations.

SUMMARY: The Secretary of Education amends provisions of the regulations governing the income contingent repayment plan under the William D. Ford Federal Direct Loan (Direct Loan) Program regulations. The Secretary is amending these provisions to provide benefits to borrowers and protect the taxpayers' interests.

EFFECTIVE DATE: These regulations take effect July 1, 1996. However, affected parties do not have to comply with the information collection requirements in § 685.209 until the Department of Education publishes in the Federal Register the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Edelstein, Program Specialist, Direct Loan Policy Group, Policy Development Division, U.S. Department of Education, Room 3053, ROB-3, 600 Independence Avenue, SW, Washington, D.C. 20202-5400. Telephone: (202) 708-9406. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**Background**

On July 1, 1994, the Secretary published final regulations that included provisions for the income contingent repayment plan during Year One of the Direct Loan Program. The Higher Education Act of 1965, as amended (HEA), directed the Secretary, to the extent practicable, to develop proposed rules for the Direct Loan Program through a negotiated rulemaking process for the second and subsequent years of the program (1995-1996 and beyond). Therefore, following negotiated rulemaking, the Secretary published a Notice of Proposed Rulemaking (NPRM) on August 18, 1994, and final regulations on December

1, 1994, both of which included new provisions for the income contingent repayment plan of the Direct Loan Program. On December 22, 1994, the Secretary published regulations that revised the July 1, 1994, regulations to provide that provisions for income contingent repayment would be identical for Year One and Year Two of the Direct Loan Program.

On September 20, 1995, the Secretary published a notice of proposed rulemaking (60 FR 48848), proposing to make improvements to the existing income contingent repayment plan. These changes were proposed for Year Three of the program and beyond. The following section summarizes the major revisions to the proposed rule.

Substantive Revisions to the Proposed Rule**Section 685.209(a)(3)**

- The definition of "discretionary income" under the proposed income contingent repayment plan has been revised. Under these final regulations, discretionary income is now defined as the borrower's adjusted gross income (AGI) minus the United States Department of Health and Human Services (HHS) poverty level appropriate to the borrower's family size. This is the same definition of discretionary income as in existing regulations.

Appendix A

- The income percentage factor chart has been revised so that there are only two categories of borrowers: single and married/head of household. Therefore, married and head-of-household borrowers with the same family size, income, and debt make the same payments. Under the proposed income contingent repayment plan, head-of-household borrowers actually made higher payments than married borrowers with the same income and debt levels; the Secretary has determined that head-of-household borrowers should not be required to make higher payments than married borrowers with the same debt and income.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 19 parties submitted comments on the proposed regulations. An analysis of the comments and the changes follows. Major issues are grouped according to subject, with references to the appropriate sections of the regulations. Technical and other minor changes, and suggested changes the Secretary is not

legally authorized to make under the applicable statutory authority, generally are not addressed.

Revising Income Contingent Repayment

Comments: A number of commenters recommended that any revisions to the plan be brought about through negotiated rulemaking. These commenters noted that the existing repayment plan was developed through extensive negotiated rulemaking.

Discussion: Section 457 of The HEA requires the Secretary to conduct negotiated rulemaking for the Direct Loan Program only to the extent practicable. This section does not require negotiated rulemaking for amendments to existing regulations. Further, the Secretary does not believe that it is practicable to conduct negotiated rulemaking for amendments to these regulations. Negotiated rulemaking is a lengthy process that would have prevented implementation of the revised income contingent repayment plan for the 1996-1997 academic year. For these amendments, the Secretary has decided not to use the negotiated rulemaking process to solicit input from the higher education community. In the Secretary's opinion, the revised income contingent repayment plan is an improvement over the existing plan, and borrowers should be able to benefit from these regulatory revisions as soon as possible. Further, a number of commenters supported the Secretary's proposal to revise the existing plan.

Changes: None.

Required Minimum Payment

Comments: In response to the Secretary's request for comments regarding a required minimum payment for all borrowers, one commenter recommended establishing a minimum payment of \$15.00 for all borrowers, including those with a calculated repayment amount of \$0. Another commenter advocated establishing a minimum payment of \$2.00, if the Secretary were to require a minimum payment from all borrowers. A third commenter suggested that borrowers simply send in a coupon on a monthly basis in place of a payment amount.

Most commenters argued against requiring a payment from a borrower whose calculated repayment amount is \$0. In addition, many commenters questioned whether collecting \$2.00 payments would be cost-effective. One commenter stated that borrowers with a calculated payment of less than \$2.00 would not likely have a checking account and that the requirement to make these minimal payments would,